

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

ANABEL RUIZ and ERICK GOMEZ, individually )  
 and on behalf of others similarly situated, )

Plaintiffs, )

vs. )

ALL-AMERICAN & ASSOCIATES, *et al.*, )

Defendants. )

Case No.: 2:10-cv-01312-GMN-GWF

**ORDER**

Plaintiff's Motion to Compel (#57)

This matter comes before the Court on Plaintiff's Motion to Compel (#57), filed on October 19, 2011. On November 1, 2011, the Court entered a Minute Order setting a hearing on this motion for December 1, 2011. Responses to this motion were due by November 5, 2011. To date, no response has been filed. The Court therefore vacates the scheduled hearing and enters this order.

This case arises from an employment dispute where Plaintiffs allege that Defendants violated their individual and collective rights under the Fair Labor Standards Act, 29 U.S.C. §201 and Nevada state law. On August 1, 2011, Plaintiffs served Defendant Donnita Spallitta and All-American Painting , Drywall & Wallcovering, LLC ("All-American") their First Set of Requests for Production. Defendants failed to respond by August 31, 2011. On September 16, 2011, Defendants Donnita Spallitta and All-American served their Response to Plaintiffs' First Set of Requests for Production of Documents. In response, Defendants produced no documents, but instead, objected to each request claiming that Defendants do not have possession of the requested documents. A telephonic meet and confer was held on October 3, 2011, but no resolution was reached. Plaintiffs now bring this motion requesting the Court to compel Defendants Donnita Spallitta and All-American to produce the requested documents.

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Pursuant to LR 7-2(d), “failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion.” Defendants Donnita Spallitta and All-American failed to respond to the instant motion. Further, the Court has reviewed Defendants’ objections to the discovery requests, and the Court is not convinced that Defendants lack possession and/or control over the requested documents. The Court will therefore grant Plaintiffs’ motion and order Defendants to produce the requested documents without objection. Further, pursuant to Rule 37(a)(5)(A), the Court must award the moving party “reasonable expenses incurred in making the motion, including attorney’s fees.” The Court will therefore award Plaintiffs’ their reasonable fees and costs associated with bringing this motion. Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff’s Motion to Compel (#57) is **granted**. Defendants Donnita Spallitta and All-American shall fully respond without objection to Plaintiff’s First Set of Production of Documents no later than **Tuesday, December 6, 2011**.

**IT IS FURTHER ORDERED** that Plaintiffs shall be awarded their reasonable fees and costs associated with bringing this motion.

1) Counsel for Plaintiffs shall, no later than 15 days from entry of this order, serve and file a memorandum, supported by the affidavit of counsel, establishing the amount of attorney’s fees and costs incurred in the motions addressed in this order. The memorandum shall provide a reasonable itemization and description of the work performed, identify the attorney(s) or other staff member(s) performing the work, the customary fee of the attorney(s) or staff member(s) for such work, and the experience, reputation and ability of the attorney performing the work. The attorney’s affidavit shall authenticate the information contained in the memorandum, provide a statement that the bill has been reviewed and edited, and a statement that the fees and costs charged are reasonable.

(2) Defendants shall have 15 days from service of the memorandum of costs and attorney’s fees in which to file a responsive memorandum addressing the reasonableness of the costs and fees sought, and any equitable considerations deemed appropriate for the court to consider in determining the amount of costs and fees which should be awarded.

(3) Counsel for Plaintiffs shall have 11 days from service of the responsive memorandum in which to file a reply.

**IT IS FURTHER ORDERED** that the motions hearings scheduled for **December 1, 2011** is **vacated**.

DATED this 22nd day of November, 2011.

  
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GEORGE FOLEY, JR.  
United States Magistrate Judge